

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRADFORD L. DALEY,

Plaintiff,

V.

SAMUEL S. PARTRIDGE,

Defendant.

CIVIL ACTION NO. 2:07cv551-ID

ORDER

Before the court is Plaintiff Bradford L. Daley's motion to dismiss complaint (Doc. No. 6), filed pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. Rule 41(a)(1)(i) provides that "an action may be dismissed by the plaintiff without order of court . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs[.]" Fed. R. Civ. P. 41(a)(1)(i). Plaintiff filed his motion prior to service by Defendant Samuel S. Partridge of an answer or of a motion for summary judgment. Pursuant to the express language of Rule 41(a)(1)(i), Plaintiff need not seek a court order for dismissal. See id. Rather, Plaintiff "has an absolute right to dismiss without prejudice and no action is required on the part of the court." Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003). Accordingly, the court construes Plaintiff's motion as a notice of dismissal which was effective on July 12, 2007, the date it was filed. See id.; see also Wilson v. City of

San Jose, 111 F.3d 688, 692 (9th Cir. 1997) (A Rule 41(a)(1)(i) dismissal "is effective on filing[.]"). The Clerk is DIRECTED to close this case.

Done this 13th day of July, 2007.

/s/ Ira DeMent

SENIOR UNITED STATES DISTRICT JUDGE